

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 36 OF 1999

1. State of Goa,
Through the Special Land
Acquisition Officer (SIP),
Gogol, Margao, Goa.
2. The Executive Engineer,
Works Division XIII,
Irrigation Department,
Quepem, Goa. ... Appellants.

VERSUS

Shri Govind Xanu Raut Dessai,
Assolda, Quepem, Goa. ... Respondent.

Mr. G. Shirodkar, Addl. Government Advocate for
the Appellants.

Mr. S.D. Lotlikar, Senior Advocate with Ms. S. Naik,
Advocate for the Respondent.

CORAM: N.A. BRITTO, J.

DATE: 13TH APRIL, 2004.

ORAL JUDGMENT:

The State of Goa through its Special Land Acquisition Officer (SIP) and Executive Engineer, Works Division XIII (Irrigation Department) has filed the present appeal against the Judgment/Award of the learned Addl. District Judge, Margao (Reference Court, for short) dated 6.4.98.

2. Some facts are required to be stated to dispose of the present appeal.

3. By Notification issued under Section 4(1) of

the Land Acquisition Act, 1894 and published in Government Gazette dated 28.5.1987, the Government acquired about 71,890 sq.m. of land for the purpose of construction of Xelvona Branch of D-1 S.I.P. of Selaulim Irrigation Project in villages of Assolda, Xalvona and Xic-Xelvona in Quepem Taluka and in that was included 975 sq.m. of the land of the respondent surveyed under No.47/11 of Assolda village. The L.A.O. by Award dated 30.9.88 awarded to the respondent compensation at the rate of Rs.4/- per sq.m. and the applicant/respondent dissatisfied with the same sought reference to be made under Section 18 of the Act and the Reference Court was pleased to enhance the compensation payable to the respondent at the rate of Rs.19/- per sq.m.

4. Before the Reference Court the respondent examined his son and attorney (AW.1) and produced a sale deed dated 15.12.1987 and in support of the same examined AW.2 Francis Moura. The said sale deed was admittedly a post-notification sale deed and was in respect of a plot of land admeasuring 935 sq.m. from survey No.33 of Assolda village and which was sold at the rate of Rs.35/- per sq.m.

5. The learned Reference Court based on the said sale deed dated 15.12.1987 (Exh..AW.1/B) fixed the

compensation payable to the respondent at the rate of Rs.19/- per sq.m. as against Rs.35.00 per sq.m. claimed by the respondent in the said reference, after taking certain deductions. The learned Reference Court took note of the fact that the sale deed was of 6-1/2 months from the date of notification and reduced the price by 5%. The learned Reference Court then deducted a sum of Rs.5/- per sq.m. towards solatium and again 33% towards development and thus fixed the market value payable to the respondent at Rs.19/- per sq.m. It has been submitted by Shri Lotlikar, learned senior counsel for the respondent that the total deduction worked out to 53%.

6. The first submission made by learned Govt. Advocate Shri Shiroadkar is that the learned Reference Court was not justified in fixing the market value of the acquired land based on post-notification sale deed and in support of the said submission, Shri Shiroadkar has placed reliance on the case of **Karan Singh and others v. Union of India** (1997 (8) S.C.C. 186).

7. On the other hand, learned senior counsel Shri Lotlikar has submitted that although the notification under Section 4(1) of the Act was published in Gazette dated 3.3.88, the notification under Section 6 of the Act was published on 3.3.88. Shri Lotlikar has

submitted that the present acquisition was for the construction of Water Canal which might have been relevant only for the purpose of agriculture and the same would not have influenced the prices in the locality.

8. Shri Lotlikar has next submitted that the post-notification sale deed in this case was only about 6-1/2 months later in point of time from the date of notification under section 4 of the Act and that too the same will not affect the price. Learned senior counsel Shri Lotlikar has placed reliance on the case of **Mehta Ravindrarai Ajitrai (deceased) through his heirs and LRs and others v. State of Gujarat** (1989) 4 S.C.C. 250

9. In the said case of **Mehta Ravindrarai** (supra) the notification under section 4(1) of the Act was published on 6.8.56 and the sale deed which was relied upon was dated 2.4.1957 which was executed pursuant to an agreement dated 21.1.1957. The Hon'ble Supreme Court noted that the said agreement for sale was entered into about five months after the date of publish of notification under section 4 of the Act and with regard to the same further observed that there was, however, nothing in the evidence to show that there was any sharp or speculative rise in the price

of land after the acquisition and this was noticed by the High Court. The Hon'ble Supreme Court observed that under such circumstances, the High Court was not justified in not taking this instance into account at all as it has done on the ground it was a post acquisition sale and could not be regarded as comparable instance at all. The Supreme Court therefore proceeded to observe that although the instance reflected in the Sale Deed (Exh.152) and the agreement for sale in connection with that land pertains to a sale after the acquisition and, in the absence of any evidence to show that there was any speculative or sharp rise in the prices after the acquisition, the agreement to sell dated 21/1/57 must be regarded as furnishing some light on the market value of the land on the date of publication of Section 4 notification. The Hon'ble Supreme Court further observed that, however, certain factors had to be taken into account and appropriate deductions made from the rate disclosed in the said agreement to sell in estimating the market value of the land with which they were concerned at the date of the acquisition. The Hon'ble Supreme Court did note that one of the factors was that it appeared that there was some rise in the price of land on account of the acquisition of land in question for the purpose of constructing an industrial estate and moreover the land proposed to

have been purchased might have paid some extra amount for the convenience of getting the neighbouring land.

10. The case of **Mehta Ravindrarai Ajitrai** (supra) came for consideration in the case of **Karan Singh and others** (supra) and with reference to the same the Hon'ble Supreme Court observed that in that case there was no controversy as to whether the burden to establish that there was no rise in the price of land after the issue of notification under Section 4 of the Act was on the claimant or on the State, and as such, the said decision was of no assistance for deciding the controversy. The Hon'ble Supreme Court then observed that it was no longer in doubt that in the absence of any evidence of sale of land on the date of issue of notification under Section 4 of the Act, under certain conditions the post-notification transactions of sales of land can be relied upon in determining the market value of the acquired land. One of the conditions being that it must be shown before the Court by reliable evidence that there was no appreciation of the value of land during the period of issue of notification under Section 4 of the Act and the date of transaction of sale which is sought to be relied upon for the purposes of fixing the market value of the acquired land. It has also to be borne in mind that if the claimant relies on any

post-notification transaction, the burden is upon him to show that the price of the land remained static and there was no upward rise in the price of the land during the period of issue of notification under Section 4 of the Act and the date of transaction of sale (emphasis supplied).

11. Admittedly, in the case at hand, the acquired land of the applicant appears to have been located in a remote locality in village Assolda where there were no facilities whatsoever, all the facilities as spoken to by both the witnesses of the respondent having come about after the nearby land was developed of which a plot was purchased by AW.2 Francis Moura. There does not appear to have been even water facility available in the acquired land and therefore one could not rule out that after it was known that a Canal would be built in that area that the prospects of development increased and consequently the increase in the price of land. The Hon'ble Supreme Court has time and again observed that the burden of proving that the L.A.O. has awarded inadequate compensation is always upon the person who comes before the Court for enhancement. In the case of **Special Deputy Collector and Another v. Kurra Sambasiva Rao** (A.I.R. 1997 S.C. 2625) the said principle has been reiterated by stating that the burden of proving that the amount awarded by the

L.A.O./Collector is not adequate is always on the claimant. The burden is to adduce relevant and adequate evidence to establish that the acquired lands are capable of fetching higher market value than the amount awarded by the L.A.O./Collector or that the L.A.O. proceeded on wrong premise or applied a wrong principle of law. As already stated, now the Hon'ble Supreme Court in a later decision has laid down that whenever a post-notification sale deed is relied upon, it is for the applicant who comes forward to claim enhancement to show by reliable evidence that there was no appreciation of the value of land during the period of issue of notification under Section 4(1) of the Act and the date of transaction of sale which is sought to be relied upon. In a place where there was no water, when water is made available, prices of land are bound to go up whether for agricultural or residential purposes. In my opinion, the respondent had failed to discharge the said burden and in the circumstances therefore, there was no question of learned reference court placing any reliance on the said post-notification sale deed dated 15.12.87 as a basis for enhancing the market value of the acquired land.

12. Learned Govt. Advocate has also submitted that the respondent had not proved that the acquired land

was similar to the said plot of sale deed dated 15.12.1987 and I find that there is lot of merit in this said submission as well. It is now well settled law that before any deduction is taken it must be shown that the sale deed plot is comparable or similar to the land acquired. In this context reference could be made to the case of **Shaji Kuriakose and another v. Indian Oil Corpn. Ltd. and others** (2001 7 S.C.C. 650). In this case it has been observed by the Hon'ble Supreme Court that comparable sales method of valuation is preferred because it furnishes the evidence for determination of the market value of the acquired land at which a willing purchaser would pay for the acquired land if it had been sold in the open market at the time of issue of notification under Section 4 of the Act and that there are certain factors which are required to be fulfilled and on fulfilment of those factors the compensation can be awarded according to the value of the land reflected in the sales, the factors being, inter alia, ... (4) that the land covered by the sales must be similar to the acquired land, and (5) that the size of plot of the land covered by the sales be comparable to the land acquired. And if all these factors are satisfied, then there is no reason why the sale value of the land covered by the sales be not given for the acquired land.

13. The L.A.O.in his said award dated 30.9.1988 had, inter alia, observed that the Government was acquiring a strip of land passing through many fields, having different merits and utility and the said paddy fields were green areas and could not be brought to any other use easily and the said land was far away from the main locality and hence may not fetch a very high price and had no facilities of light, pipe water, road, telephone lines for easy communication. As admitted by AW.1 the plot of sale deed was a developed plot though AW.2 Francis Moura has tried to give an impression that it was not so developed. AW.1 does not even know what is the area of the property of the respondent surveyed under No.47/11. He only knows that it is a vast property. Although AW.1 Satyawar stated that the features of the property of the sale deed and the acquired land is similar at one stage and at another stage he has admitted in his cross-examination that the acquired land was apparently barad and partly paddy field which was being cultivated but he has been unable to say as to what area of the paddy field or for that matter what area of the barad land has now been acquired. In fact, AW.1 Satyawar does not know into how many survey numbers the respondent's property has been surveyed. AW.2 Francis had also stated that the plot purchased by him and the barad land of the respondent were

similar, but considering that the canal passed partly from the paddy field and partly through the barad land, he too conceded that the acquired land was partly levelled and partly required filling because it was a paddy field but did not specify what was the area of the paddy field which required filling. The evidence of AW.2 Francis gives an impression that what was acquired from the respondent's property was also a low lying paddy field which required to be filled before it could be developed and in the absence of any further evidence on that aspect, in my opinion the plot of sale deed dated 15.12.1987 could not be compared with the respondent's property, the area of which was not even known to the respondent.

14. Shri Shirodkar, learned Govt. Advocate has further submitted that the acquired land had no building potential in that it was located in a remote place in village Assolda. In my opinion, this submission also deserves to be considered as it is exactly not known where the acquired land was located in the said village Assolda. There is no doubt that AW.1 Satyawam stated that the acquired land was located at a distance of about 5kms. from Sanvordem and it was suggested to the witness that the distance from Sanvordem would be about 8 kms. a suggestion which he denied. It could be assumed that the

acquired land was located at a distance of about 8 kms. from Sanvordem. However, as far as Margao town was concerned he stated that the acquired land was 12 metres (sic kms.?) away. However, it is to be noted that there is absolutely no corroboration to the statements made by AW.1 Satyawani. In fact, AW.2 Francis does not appear to know the distances. He has stated that the distance between the plot of sale deed and the acquired land may be more than 100 metres or may be less than 100 metres. Again he has stated that he could not say what is the distance from the acquired land to the market place at Assolda. If AW.1 Satyawani has denied that for majority marketing facilities the persons from the locality have to come to Margao, AW.1 Satyawani has admitted that for purchasing articles which are not available at the local market at Assolda they have to go to other places like Margao. It is true that AW.1 Satyawani has stated that the acquired land was at a distance of about 150 to 200 metres from the place where there are houses, a secondary school, a primary school, a market, but as already stated, there is absolutely no corroborative material produced by the respondent in support of the said distances and the said distances could not have been accepted only because they were not at all denied on behalf of the appellant. From the description given by both the witnesses of the

respondent, it appears that the acquired land was located at the place where there were only paddy fields far away from major towns where there was development. We also should take note of the fact that we are dealing with sale of plots of land in a State which has its length of 105 kms. and width of 60 kms. and the location by every kilometre does count.

15. In conclusion, it may be stated that the evidence produced on behalf of the respondent was sketchy and scanty and considering that it is for the applicant to prove his case for enhancement by cogent and reliable evidence, as held by the Hon'ble Supreme Court in the case of **Manipur Tea Co. Pvt. Ltd. v. Collector of Hailakandi** (A.I.R. 1997 S.C., 1779) the reference ought to have been rejected. The learned Reference Court was certainly not justified in enhancing the compensation claimed by the respondent from Rs.4/- to Rs.19/- per sq.m.

16. In view of the above, I have no option but to allow the appeal and set aside the judgment/award of the Reference Court dated 6.4.1998 and reject the

reference filed on behalf of the respondent.
Considering the facts, there will be no order as to
costs.

sl.

N. A. BRITTO, J.